

Matthew Franklin Jaksa (CA State Bar No. 248072)  
HOLME ROBERTS & OWEN LLP  
560 Mission Street, 25<sup>th</sup> Floor  
San Francisco, CA 94105-2994  
Telephone: (415) 268-2000  
Facsimile: (415) 268-1999  
Email: matt.jaksa@hro.com

Attorneys for Plaintiffs,  
CAPITOL RECORDS, INC.; UMG  
RECORDINGS, INC.; SONY BMG MUSIC  
ENTERTAINMENT; and WARNER BROS.  
RECORDS INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CAPITOL RECORDS, INC., a Delaware  
corporation; UMG RECORDINGS, INC., a  
Delaware corporation; SONY BMG MUSIC  
ENTERTAINMENT, a Delaware general  
partnership; and WARNER BROS. RECORDS  
INC., a Delaware corporation,  
Plaintiffs,

v.

JOHN DOE,  
Defendant.

CASE NO.

**COMPLAINT FOR COPYRIGHT  
INFRINGEMENT**

E-filing

EDL

## JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*).

2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).

3. Venue in this District is proper. See 28 U.S.C. §§ 1391(b), 1400(a). Although the true identity of Defendant is unknown to Plaintiffs at this time, on information and belief, Defendant may be found in this District and/or a substantial part of the acts of infringement complained of herein occurred in this District. On information and belief, personal jurisdiction in this District is proper because Defendant, without consent or permission of the copyright owner, disseminated over the Internet copyrighted works owned and/or controlled by Plaintiffs. On information and belief, such illegal dissemination occurred in every jurisdiction in the United States, including this one. In addition, Defendant contracted with an Internet Service Provider ("ISP") found in this District to provide Defendant with the access to the Internet which facilitated Defendant's infringing activities.

## PARTIES

4. Plaintiff Capitol Records, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of New York.

5. Plaintiff UMG Recordings, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

6. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general partnership, with its principal place of business in the State of New York.

7. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business in the State of California.

8. The true name and capacity of Defendant are unknown to Plaintiffs at this time. Defendant is known to Plaintiffs only by the Internet Protocol ("IP") address assigned to Defendant by his or her ISP on the date and time of Defendant's infringing activity. See Exhibit A. Plaintiffs

1 believe that information obtained in discovery will lead to the identification of Defendant's true  
2 name.

3 **COUNT I**

4 **INFRINGEMENT OF COPYRIGHTS**

5 9. Plaintiffs incorporate herein by this reference each and every allegation contained in  
6 each paragraph above.

7 10. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of  
8 exclusive rights under United States copyright law with respect to certain copyrighted sound  
9 recordings, including, but not limited to, all of the copyrighted sound recordings on Exhibit A to this  
10 Complaint (collectively, these copyrighted sound recordings shall be identified as the "Copyrighted  
11 Recordings"). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright  
12 Registration issued by the Register of Copyrights to each Plaintiff as specified on each page of  
13 Exhibit A.

14 11. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the  
15 exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted  
16 Recordings to the public.

17 12. Plaintiffs are informed and believe that Defendant, without the permission or consent  
18 of Plaintiffs, has continuously used, and continues to use, an online media distribution system to  
19 download and/or distribute to the public certain of the Copyrighted Recordings. Exhibit A identifies  
20 the IP address with the date and time of capture and a list of copyrighted recordings that Defendant  
21 has, without the permission or consent of Plaintiffs, downloaded and/or distributed to the public.  
22 Through his or her continuous and ongoing acts of downloading and/or distributing to the public the  
23 Copyrighted Recordings, Defendant has violated Plaintiffs' exclusive rights of reproduction and  
24 distribution. Defendant's actions constitute infringement of Plaintiffs' copyrights and/or exclusive  
25 rights under copyright. (In addition to the sound recordings listed on Exhibit A, Plaintiffs are  
26 informed and believe Defendant has, without the permission or consent of Plaintiffs, continuously  
27 downloaded and/or distributed to the public additional sound recordings owned by or exclusively  
28 licensed to Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of

1 infringement are ongoing. Exhibit A includes the currently-known total number of audio files being  
2 distributed by Defendant.)

3 13. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on  
4 each respective album cover of each of the sound recordings identified in Exhibit A. These notices  
5 of copyright appeared on published copies of each of the sound recordings identified in Exhibit A.  
6 These published copies were widely available, and each of the published copies of the sound  
7 recordings identified in Exhibit A was accessible by Defendant.

8 14. Plaintiffs are informed and believe that the foregoing acts of infringement have been  
9 willful, intentional, and in disregard of and with indifference to the rights of Plaintiffs.

10 15. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights  
11 under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) against  
12 Defendant for each infringement of each copyrighted recording. Plaintiffs further are entitled to  
13 their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

14 16. The conduct of Defendant is causing and, unless enjoined and restrained by this  
15 Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated  
16 or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502  
17 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing  
18 Plaintiffs' copyrights, and ordering that Defendant destroy all copies of copyrighted sound  
19 recordings made in violation of Plaintiffs' exclusive rights.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///



1 WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

2 1. For an injunction providing:

3 "Defendant shall be and hereby is enjoined from directly or indirectly  
4 infringing Plaintiffs' rights under federal or state law in the  
5 Copyrighted Recordings and any sound recording, whether now in  
6 existence or later created, that is owned or controlled by Plaintiffs (or  
7 any parent, subsidiary, or affiliate record label of Plaintiffs)  
8 ("Plaintiffs' Recordings"), including without limitation by using the  
9 Internet or any online media distribution system to reproduce (i.e.,  
10 download) any of Plaintiffs' Recordings or to distribute (i.e., upload)  
11 any of Plaintiffs' Recordings, except pursuant to a lawful license or  
12 with the express authority of Plaintiffs. Defendant also shall destroy  
13 all copies of Plaintiffs' Recordings that Defendant has downloaded  
14 onto any computer hard drive or server without Plaintiffs'  
15 authorization and shall destroy all copies of those downloaded  
16 recordings transferred onto any physical medium or device in  
17 Defendant's possession, custody, or control."

18 2. For statutory damages for each infringement of each Copyrighted Recording  
19 pursuant to 17 U.S.C. § 504.

20 3. For Plaintiffs' costs in this action.

21 4. For Plaintiffs' reasonable attorneys' fees incurred herein.

22 5. For such other and further relief as the Court may deem just and proper.

23 Dated: March 27, 2008

HOLME ROBERTS & OWEN LLP

24 By: 

25 MATTHEW FRANKLIN JAKSA  
26 Attorney for Plaintiffs  
27 CAPITOL RECORDS, INC.; UMG  
28 RECORDINGS, INC.; SONY BMG  
MUSIC ENTERTAINMENT; and  
WARNER BROS. RECORDS INC.

**EXHIBIT A****JOHN DOE****IP Address:** 207.62.146.131 2007-10-26 21:58:46 EDT**CASE ID#** 146131699**P2P Network:** GnutellaUS**Total Audio Files:** 316

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Capitol Records, Inc.	Marcy Playground	Sex and Candy	Marcy Playground	240-954
UMG Recordings, Inc.	Blink-182	All the Small Things	Enema of the State	279-826
Capitol Records, Inc.	OK Go	You're So Damn Hot	Ok Go	322-969
SONY BMG MUSIC ENTERTAINMENT	The Ataris	In This Diary	So Long, Astoria	332-822
Warner Bros. Records Inc.	Linkin Park	Somewhere I Belong	Meteora	346-247
Capitol Records, Inc.	Yellowcard	Lights And Sounds	Lights and Sounds	SRu 587-735
BMG Music	Kelly Clarkson	Miss Independent	Thankful	355-313
Capitol Records, Inc.	OK Go	Here It Goes Again	Oh No	377-392
UMG Recordings, Inc.	Nelly Furtado	Say It Right	Loose	387-509
BMG Music	Kelly Clarkson	Gone	Breakaway	352-147

## CIVIL COVER SHEET

ORIGINAL

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO.)

## I. (a) PLAINTIFFS

CAPITOL RECORDS, INC.; UMG RECORDINGS, INC.; SONY BMG MUSIC ENTERTAINMENT; and WARNER BROS. RECORDS INC.

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF

New York County, NY

(EXCEPT IN U.S. PLAINTIFF CASES)

## DEFENDANT

JOHN DOE

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

## (c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

HOLME ROBERTS & OWEN LLP

Matthew Franklin Jaksa (SBN: 248072) Phone: (415) 268-2000

560 Mission Street, 25th Floor Fax: (415) 268-1999

San Francisco, CA 94105-2994

## ATTORNEYS (IF KNOWN)

## II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3. Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 180 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury Med. Malpractice <input type="checkbox"/> 365 Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal <input type="checkbox"/> 28 USC 158 <input type="checkbox"/> 423 Withdrawal <input type="checkbox"/> 28 USC 157 <b>PROPERTY RIGHTS</b> <input checked="" type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Amer w/disab - Empl <input type="checkbox"/> 446 Amer w/disab - Other <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW 405(g) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

## VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

17 U.S.C. § 501 et seq. – copyright infringement

## VII. REQUESTED IN COMPLAINT

☐ CHECK IF THIS IS A CLASS ACTION

DEMAND \$

☐ CHECK YES only if demanded in complaint

UNDER F.R.C.P. 23:

Statutory damages; injunction

JURY DEMAND:

☐ YES

☒ NO

## VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

## IX. DIVISIONAL ASSIGNMENT

(CIVIL L.R. 3-2) (PLACE AN "X" IN ONE BOX ONLY)

☐

SAN FRANCISCO/OAKLAND

☐

SAN JOSE

DATE March 27, 2008

SIGNATURE OF ATTORNEY OF RECORD